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UNCLAS CARACAS 000946

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NSC FOR TSHANNON AND CBARTON
USCINSO ALSO FOR POLAD
STATE PASS USAID FOR DCHA/OTI

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SUBJECT: SUPREME COURT DONNYBROOK STALLS RECALL

REF: CARACAS 00923 AND PREVIOUS

Summary:

1. (U) The Supreme Court (TSJ) Constitutional Chamber ordered the Electoral Chamber to stop all activity related to the National Electoral Council (CNE) March 17. In a March 18 letter, the Electoral Chamber reaffirmed its jurisdiction in the matter and refused to give up its files. For its part, the CNE appealed the Electoral Chamber's March 15 injunction regarding the presidential recall referendum signatures in the in the TSJ's Constitutional Chamber March 17, alleging that order violated CNE autonomy as a separate governmental power. CNE vice president Ezequiel Zamora, part of the opposition minority, said March 18 the CNE was obligated to follow the Electoral Chamber's order and schedule a presidential recall referendum. Pro-GoV CNE director Jorge Rodriguez was hospitalized March 18 for hypertension. Justice Luis Martinez, the vice president of the TSJ Electoral Chamber, issued a public statement March 18 denouncing the March 15 ruling, and attacking his fellow Electoral Chamber justices as politically motivated. The apparent deadlock in the court now leaves little room for a legal solution that can satisfy the parties. In the meanwhile, the presidential recall referendum is stalled.

Dueling Court Chambers

2. (U) The feud between Chambers of the Supreme Court of Justice (TSJ) continued March 17, as three justices from the court's Constitutional Chamber ordered the Electoral Chamber to stop all activity on legal actions related to the National Electoral Council (CNE) and signatures seeking a presidential recall referendum (reftel). As authority, the Constitutional Chamber cited its own opinion, issued in December 2001 in a separate case, in which it declared itself competent to hear cases having to do with the CNE. The March 17 pronouncement also ordered the TSJ's Electoral Chamber to transfer files having to do with the CNE case. In a March 18 letter sent to the Constitutional Chamber, Justice Alberto Martini, the president of the Electoral Chamber, reaffirmed his Chamber's legal authority to settle electoral matters and refused to transfer any files in the pending CNE case. Martini also questioned the legitimacy of the Constitutional Chamber's March 17 order, saying it was signed by only three members of the five-judge chamber when four are required under court rules to form a quorum.

CNE: We'll Follow All Court Orders, But...

3. (U) The CNE filed an appeal in the TSJ's Constitutional Chamber March 17, alleging that the Electoral Chamber's March 15 order regarding signatures for a presidential recall referendum violated CNE autonomy as a separate governmental power. In a public announcement, Francisco Carrasquero the CNE's pro-GoV president, said the legal action was necessary to ensure the CNE remains the "final authority for all electoral issues." Carrasquero tempered his earlier comments regarding the March 15 ruling, by saying he was a "man of laws" and would therefore follow all orders of the court. He insisted, however, that the Constitutional Chamber was the appropriate forum for any questions regarding the CNE. (Note: Carrasquero did not address the arguments raised by the Electoral Chamber, the opposition and by constitutional scholars, who point to Article 298 of the Venezuelan constitution, which says all questions regarding the CNE will be settled in the TSJ's Electoral Chamber. End Note.) Carrasquero also denied that the referendum process was being delayed, saying "nothing is paralyzed." Carrasquero said he expects the process will continue once the Constitutional Court issues a final ruling.

4. (U) Ezequiel Zamora, the CNE pro-opposition vice president, responded March 18, saying the CNE was obligated

to follow the March 15 order of the TSJ's Electoral Chamber, add the more than 870,000 signatures at issue to the total verified, and schedule a presidential recall referendum. Zamora said he and CNE director Sobella Mejias did not agree with Carrasquero's decision to appeal the Electoral Chamber March 15 ruling. Zamora also hinted he may take the place of pro-GoV CNE director Jorge Rodriguez at a March 19 meeting with opposition leaders scheduled to negotiate the terms of an appeals process. Rodriguez was hospitalized March 18 for treatment of hypertension.

Dissenting Electoral Justice Lashes Out

15. (U) Justice Luis Martinez, the pro-GoV vice president of the TSJ Electoral Chamber, issued a public statement March 18 denouncing the Electoral Chamber's March 15 ruling regarding signatures for a recall referendum, and attacking his fellow Electoral Chamber justices as politically motivated. Martinez's statement was carried as a paid, full-page advertisement in the major Caracas daily newspaper El Universal and in the pro-GoV daily tabloid Vea. (Note: El Universal sources told the Embassy press section that such an advertisement cost over 18 million bolivares, or approximately \$9,000 usd. End note.)

16. (U) Martinez did not refer to any legal basis for his argument, but instead leveled a personal attack on his colleague Justice Alberto Martini, the Electoral Chamber president. Martini, he said, had written a "disgraceful" decision, filled with "serious falsehoods" designed to support his personal political preferences. Martinez's paid announcement said Martini's decision was beneath the dignity of a court chamber president, and could qualify as "serious and criminal behavior." Martini also set out his alternative policy argument, suggesting that the CNE was correct to send more than 870,000 signatures for additional consideration rather than validating them.

Comment:

17. (U) The GoV is pulling out the stops to obscure the legal issues and to raise questions of propriety in regard to rival sections of the Supreme Court. It is worth noting that each argument raised by GoV operatives is a mirror of complaints lodged by opposition lawyers against the GoV. When the smoke clears, the GoV still enjoys a narrow majority in the CNE, the TSJ's Constitutional Chamber, and the National Assembly, and will likely be able to block any opposition appeal in the TSJ sitting en banc. Any eventual solution, therefore, will

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need to be the result of a political agreement rather than from a judicial decree. In the meanwhile, the presidential recall referendum is stalled.
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